THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 19.09.2007

+ **OMP No.294/2005**

V RAMGOPAL ...Petitioner

- versus -

H.C.L. COMNET SYSTEMS & SERVICES LTD. ....Respondent

Advocates who appeared in this case:
For the Petitioner : Mr Vikram Mehta.
For the Respondent : Mr M.S. Vinaik.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the award made by the sole arbitrator on 02.03.2005.

2. The petitioner, who was the claimant before the arbitrator, was an employee of the respondent. The petitioner served as an employee from 10.3.1995 to 20.10.1998. During the course of employment, the petitioner

sought the use of an official car. The respondent and the petitioner entered into a Memorandum of Agreement dated 01.11.1996 whereby a car was taken by the respondent company as a lessee inasmuch as the same had been financed through Kotak Mahindra. The petitioner was given this car (Maruti Zen) for his use subject to several conditions as per the Memorandum of Agreement dated 01.11.1996. Clause 1 of the Agreement stipulated that the respondent would be the lessee and the petitioner was only a bailee in respect of the car and he had no right or title to the said car. By virtue of clause 2, the petitioner authorised the respondent to deduct a sum of Rs 2,677/- per month towards the personal use of the car from his salary. In terms of clause 3 of the said Agreement, the lease period of the car was indicated as being 60 months and the said clause importantly stipulated that the petitioner would be entitled to purchase the car after the lease period from the respondent on paying a consideration computed @ 1% of the value of the car. The proviso to this clause stipulated that the entitlement of the petitioner to purchase would accrue only upon the respondent becoming the owner of the car. The car was, however, to remain in the possession of the employee till such time.

3. According to the learned counsel for the petitioner, clause 3 granted valuable rights to the petitioner inasmuch the petitioner was entitled to purchase the car by only paying 1% of the value of the car. Moreover, the car was to remain, at all times, in the possession of the petitioner. However, this clause

was applicable only if the petitioner continued to be in the employment of the respondent for the entire duration of 60 months. In case, the petitioner did not remain in such employment, the rights and liabilities of the parties were governed by clause 10 of the Agreement. The proviso to clause 10 stipulated that in the event of cessation of service of the petitioner, for any reason whatsoever, before the expiry of the 60 months period, the petitioner shall purchase the same from the owner of the car through the company and subject to certain conditions. One of the conditions being that the petitioner had to pay in advance to the respondent in lumpsum an amount equivalent to the equated monthly installments that the respondent would have to pay to the leasing company till the end of the lease period. There were other stipulations depending on the stage as to when the petitioner ceased to be in the employment of the respondent. Different stipulations were provided for different periods. The periods being upto the 24th month of the allotment of the car, between the 25th month till the expiry of the 30th month and so on. According to the learned counsel for the petitioner, the petitioner had ceased to be in the employment of the respondent between the 25th month and 30th month whereas, according to the learned counsel for the respondent, the petitioner had ceased to be in the employment of the respondent within the first period of 24 months. The reason for this difference is that the petitioner had tendered his resignation in June 1998 but his resignation was accepted only w.e.f. 22.10.1998. Therefore, the respondent states that he resigned before the 24th

month was over whereas the petitioner submits that since his resignation was accepted on 22.10.1998, his employment ceased only after the 24th month.

4. Be that as it may, the fact of the matter is that the petitioner had some rights which accrued to him under clause 10 of the Agreement even in the event of cessation of his service prior to the expiry of the 60 month period. The learned Arbitrator, while construing the terms of the Agreement between the parties, has not at all considered this aspect of the matter and has gone only on the basis of what is stated in clause 1 of the agreement which stipulates that the petitioner had no right or title to the car except as a bailee under the Agreement. The learned Arbitrator has completely ignored the case of the petitioner that he had rights to purchase the car on payment of the balance amount as stipulated under the Agreement. On going through the award, I find that this aspect of the matter has not been considered at all. In fact, there is no discussion of any evidence and, accordingly, I feel that the learned Arbitrator has completely misdirected himself in examining the claim of the petitioner.

5. The award, therefore, deserves to be set aside. The same is set aside. Since the matter has to go to the Arbitrator for adjudication afresh, it would be appropriate if an arbitrator is appointed. Accordingly, with the consent of the counsel for the parties, I appoint Mr Jayant Nath, Sr Advocate as the sold Arbitrator. The learned Arbitrator shall fix his own fee. The petitioner

shall file a fresh claim alongwith all supporting documents before the learned Arbitrator.

This petition is allowed as above.

BADAR DURREZ AHMED
(JUDGE)

September 19, 2007
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